

### **REMARKS/ARGUMENTS**

Claims 17-36 are pending in the instant application. Favorable reconsideration is kindly requested.

#### **Specification**

The specification is objected to at pages 1 and 2 for reference to claims 1, 11 and 14, which were canceled by Preliminary Amendment. As amended above, reference to the canceled claims at page 1 has been deleted. At page 2, reference to claim 1 has been deleted. No new matter has been added. Applicant respectfully submits that the rejection has been overcome and kindly requests favorable reconsideration and withdrawal.

#### **Amendments to the Claims**

The claims are amended above to generally improve their form and readability without altering their scope. Additionally, independent claim 17 is amended to include the feature of “the stud having a height extending above the top surface of the block by at least about 30% of the height of the block”. This feature is supported in the original disclosure, for example at Figs. 1, 3 and page 12, line 20.

In claim 22, the term “cubic” is replaced by –cuboid–, meaning a polyhedron bounded by six sides. See, e.g., Fig. 5.

Claim 26 is amended to recite the block has a lateral outer face and is provided with slots across the lateral outer face, configured and operative for holding edges of construction devices. See, e.g., Fig. 2; Specification p. 6, lines 8-14.

No new matter has been added.

#### **Rejection under 35 U.S.C. § 102**

Claims 17-20, 22 and 25 are rejected under 35 U.S.C. §102(b) as anticipated by U.S. Design Patent No. D384,994 to Nielsen (“Nielsen”). Applicant respectfully traverses the rejection, for at least the following reasons.

Independent claim 17 includes several features neither taught nor suggested by Nielsen. For example, the claim recites the stud extending above the top surface of the block by at least about 30% of the height of the block. By contrast, the protrusion from the top surface of Nielsen

is much shorter with respect to the block. As a result, the block according to Nielsen does not present a similar resistance to toppling over when blocks are stacked. In order for a short protrusion such as on a Nielsen block to be adequately secured into a recess, a snap lock or a functional alternative may have to be provided. But, a snap lock is prone to wear and tear. Furthermore, a snap lock is undesirable because it presents resistance to interlocking. On the other hand, a block according to independent claim 17 can be easily stacked and disassembled.

Additionally, independent claim 17 recites a substantially vertically extending land shaped complementary to the rounded grooves of the stud. This feature is neither taught nor suggested by Nielsen. Nielsen illustrates at Figure 6 only small ribs extending from the side walls of the recess that are not shaped complementary to a corresponding rounded depression in the protrusion from the top of the block. Because these ribs do not correspond to the shape of the rounded grooves of a stud, they provide the opportunity for additional rotation when stacked, an undesirable imprecision. By contrast, where the land is shaped complementary to the rounded groove of the stud, as recited in claim 17, rotation of one block with respect to another is substantially inhibited, providing a more secure interlocking between the blocks.

Therefore, Applicant respectfully submits that independent claim 17 is patentably distinguished over Nielsen. Claims 18-20, 22 and 25 each depend either directly or indirectly from independent claim 17, and incorporate its features by reference. These dependent claims are each separately patentable, but in the interest of brevity, they are offered as patentable for at least the same reasons as their underlying independent base claim, the features of which are incorporated by reference. Therefore, Applicant respectfully submits that the rejection has been overcome, and kindly requests favorable reconsideration and withdrawal.

#### **Rejection under 35 U.S.C. § 103**

Claim 21 is rejected under 35 U.S.C. §103(a) as obvious over Nielsen as applied to claim 17 and further in view of U.S. Patent No. 3,487,579 to Brettingen ("Brettingen"), U.S. Design Patent No. D564,044 to Rolf ("Rolf"), and U.S. Patent No. 5,938,497 to Mott ("Mott"). Applicant respectfully traverses the rejection, for at least the following reasons.

Initially, Rolf is not prior art with respect to the instant application. Rolf was filed March 23, 2005. The instant application is entitled to the benefit of its priority application filed April 4, 2003.

Brettingen, on the other hand, is not readily compatible with Nielsen as proposed in the Office Action. Initially, Brettingen does not teach or suggest a stud extending from the top surface of the block having substantially equally spaced teeth with rounded crests and interspaced rounded grooves. Rather, Brettingen discloses a plurality of hexagonal studs on each block, none having any depressions. Additionally, referring to Figure 2, the recess in an underside of the toy block in Brettingen makes use of an inner wall 16 including surfaces 33 which engage the spaces between the plural studs 25. Brettingen does not teach or suggest the sidewall of the recess having a substantially vertically extending land as recited in claim 17. Therefore, even presuming some apparent reason to combine Brettingen with Nielsen as proposed in the Office Action, their combination does not teach or suggest at least the features of independent claim 17 which is incorporated by reference into dependent claim 21.

Turning to Mott, the Office Action alleges Mott would motivate one of ordinary skill in the art to modify Nielsen to provide a 12-fold rotational symmetry of the stud. Applicant respectfully disagrees. Mott discloses that a connecting element 30 used to connect two adjacent building blocks for example 12, 14, 16 and has 12 points thereon. However, Mott offers no teaching or suggestion concerning a 12-fold rotational symmetry of a stud extending from a top of a building block for insertion into a recess on the bottom of the building block. The connecting bars 30 are merely used to connect adjacent building blocks, and the 12-fold rotational symmetry permits some flexibility in the shape of the adjacent building blocks (See, Figs. 7, 8). The teachings of Mott with respect to the connecting bars 30 is not transferable to a stud extending from a top surface of a block and configured to be received in a recess in the bottom surface of a like block, recited according to independent claim 17. Therefore, Applicant respectfully submits that the proposed combination of Nielsen and Mott do not suggest to one of ordinary skill in the art the modification that the Office Action attributes to them. Neither does Mott offer any teaching or suggestion to ameliorate the deficiencies of Nielsen with respect to underlying independent claim 17.

Therefore, Applicant respectfully submits that claim 21 is patentably distinguished over Nielsen, Rolf, Brettingen and/or Mott, taken singly or in any combination, and that the rejection has been overcome. Favorable reconsideration and withdrawal is kindly requested.

Claims 23 and 24 are rejected under 35 U.S.C. §103(a) as obvious over Nielsen in view of U.S. Patent No. 3,233,358 to Dehm (“Dehm”). Applicant respectfully traverses the rejection.

Initially, Dehm concerns a hole in the building block for receiving an axle. The Office Action cites web 15 of Dehm as a stud. Applicant respectfully disagrees. When viewed as a proposed combination with Nielsen, one of ordinary skill in the art would clearly recognize projections 14 as a plurality of studs corresponding to the projection present in Nielsen. Therefore, the hole 13 cited by the Office Action does not extend through one of the “studs” or projections 14. Rather, the hole 13 extends through a location where no such projection is formed. Therefore, the pass through hole as disclosed in Dehm is not centrally located in at least one stud or recess.

Additionally, referring to claim 23, the claim recites an enlargement within the stud configured and operative for receiving a head of a screw. The structure that the Office Action asserts as a recess according to Dehm is provided in an underside of the building block and not on the stud. Therefore, even if combined, the proposed combination of Nielsen and Dehm does not reach all features of the rejected claims.

Furthermore, the proposed addition of Dehm offers no teaching or suggestion to ameliorate the underlying deficiencies of Nielsen with respect to incorporated independent claim 17, nor is it alleged to. Even if there were some apparent reason to combine Nielsen and Dehm as proposed in the Office Action, their combination would not teach or suggest all features of the rejected claims.

Therefore, Applicant respectfully submits that claims 23 and 24 are patentable over Nielsen and/or Dehm, and that the rejection has been overcome. Favorable reconsideration and withdrawal is kindly requested.

Claim 26 is rejected under 35 U.S.C. §103(a) as obvious over Nielsen as applied to claim 17 in view of U.S. Patent No. 5,471,808 to De Pieri, *et al.* (“De Pieri”). Applicant respectfully traverses the rejection, for at least the following reasons.

Claim 26 is amended above to recite the block having a lateral outer face and being provided with slots across the lateral outer face configured and operative for holding the edges of construction devices. These features are not taught or suggested by De Pieri. De Pieri concerns a construction building block, not a toy building block (see for example, column 1, lines 5-19).

Referring to Fig. 3, the block 3 includes seats 24 for receiving a framework 23. The framework 23 simulates the presence of mortar ordinarily placed between blocks using conventional construction techniques. Therefore, De Pieri does not teach or suggest the slots being provided across the lateral outer face of the block. To the contrary, De Pieri specifically requires the seats 24, 25 to be along perimeter edges of the block (Col. 3, lines 4-12). The proposed combination of Nielsen and De Pieri does not teach all features of claim 26.

Furthermore, the proposed addition of De Pieri does not ameliorate the deficiencies of Nielsen with respect to underlying and incorporated independent claim 17. Therefore, Applicant respectfully submits that claim 26 is patentable over Nielsen and/or De Pieri, and that the rejection has been overcome. Favorable reconsideration and withdrawal is kindly requested.

Claim 27 is rejected under 35 U.S.C. §103(a) as obvious over Nielsen as applied to claim 17 and further in view of U.S. Patent No. 6,506,091 to Garpow ("Garpow"). Applicant respectfully traverses the rejection, for at least the following reasons.

Garpow teaches the use of a toy building block as a container for liquids. In such use, studs 40, 50, 60 may be unscrewed from the body 20 to access the contents. In any case, Garpow at most discloses the combination of a block implemented with screw on studs, and also having underside recesses. Furthermore, the Office Action alleges "no evidence of criticality of the claim ranges" namely the stud being double its length. However, according to the specification (original claim 11 and Fig. 14, for example), the preferred length of such an inserted stud is double the length of a regular stud fixably molded to the surface of a building block, so that half of its length may be inserted into the recess, with the other half having the same height above the top surface of the block as a fixed stud. This is neither taught nor suggested according to Garpow, taken alone or in combination with Nielsen. Accordingly, even presuming that there were some reasons to combine Nielsen and Garpow as proposed in the Office Action, their combination does not teach or suggest the features of claim 27.

Furthermore, the proposed addition of Garpow offers no teaching or suggestion to ameliorate the underlying deficiencies of Nielsen with respect to independent claim 17, the features of which are incorporated by reference. Therefore, Applicant respectfully submits that the rejection has been overcome, and kindly requests favorable reconsideration and withdrawal.

Claims 28-30 are rejected under 35 U.S.C. §103(a) as obvious over Nielsen in view of Dehm as applied to claim 23 and further in view of U.S. Patent No. 2,609,638 to Lindenmeyer ("Lindenmeyer"). Applicant respectfully traverses the rejection for at least the following reasons.

The Office Action offers Lindenmeyer as teaching a screw having first and second threads and a recess in the head with a particular cross section. Applicant respectfully disagrees. Initially, Dehm concerns attaching an axle to a building block. However, there is no teaching or suggestion in the combined reference to replace an axle such as Dehm with a screw as cited in Lindenmeyer. Nor is there suggestion that fixing caps of Dehm by screws with internal and external axles according to Lindenmeyer would provide any benefit. With respect to claim 29, Lindenmeyer offers no disclosure of the recited recess shape in the head of the screw (contra, Figure 6, as cited by the Office Action). Finally as to claim 30, the recited recess in question is formed in the head of the screw, not in the block. The Office Action cites to Nielsen as teaching this feature, although no screw is disclosed in Nielsen.

Therefore, Applicant respectfully submits that even presuming there were some apparent reason to combine the references as proposed in the Office Action, the purported combination of Nielsen, Dehm and Lindenmeyer do not teach or suggest all features of claims 28-30. Moreover, the proposed addition of Lindenmeyer offers no teaching or suggestion to ameliorate the underlying deficiencies of Nielsen taken alone and/or with Dehm relative to underlying independent base claim 17, the features of which are incorporated into claims 28-30 by reference. Applicant respectfully submits that the rejection has been overcome, and kindly requests favorable reconsideration and withdrawal.

Claim 31 is rejected under 35 U.S.C. §103(a) as obvious over Nielsen, in view of Dehm and Lindenmeyer as applied to claim 28, and further in view of U.S. Patent No. 5,498,188 to Deahr ("Deahr"). Applicant respectfully traverses the rejection, for at least the following reasons.

Referring to underlying and incorporated dependent claim 28, the claimed screw head shape is neither taught nor suggested by Lindenmeyer, therefore negating the possibility that the addition of Deahr could overcome the deficiency of the proposed combination applied against claim 28. Moreover, the proposed addition of Deahr offers no teaching or suggestion to

ameliorate the deficiencies of Nielsen, Dehm and/or Lindenmeyer with respect to underlying independent base claim 17, nor is it alleged to. Therefore, Applicant respectfully submits that the rejection has been overcome, and kindly requests favorable reconsideration and withdrawal.

Claims 32 and 33 are rejected under 35 U.S.C. §103(a) as obvious over Nielsen and Dehm as applied to claim 23 and further in view of Garpow. Claims 34 and 35 are rejected under 35 U.S.C. §103(a) as unpatentable over Nielsen in view of Dehm and Lindenmeyer as applied to claim 28, and further in view of Garpow. Applicant respectfully traverses the rejections, for at least the following reasons.

As already noted above, any of the proposed combinations including Nielsen, Dehm, Lindenmeyer and/or Garpow fails to teach or suggest the features of underlying and incorporated independent claim 17. Therefore Applicant respectfully submits that claims 32-36 are patentably distinguished for at least the same reasons as their underlying and incorporated independent base claim. Favorable reconsideration and withdrawal of the rejection is kindly requested.

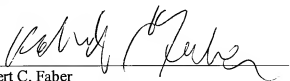
#### **Conclusion**

In light of the foregoing, Applicant respectfully submits that all claims are patentable, and kindly solicits an early and favorable Notice of Allowability.

THIS CORRESPONDENCE IS BEING  
SUBMITTED ELECTRONICALLY  
THROUGH THE PATENT AND  
TRADEMARK OFFICE EFS FILING  
SYSTEM ON MAY 21, 2010

RCF/DJT:lfj/lac

Respectfully submitted,



Robert C. Faber  
Registration No.: 24,322  
OSTROLENK FABER LLP  
1180 Avenue of the Americas  
New York, New York, 10036-8403  
Telephone: (212) 382-0700